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IN THE

Supreme Court of the United States

October Term, 1948.

No. 525

HYMAN MOORE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

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IN THE

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OCTOBER TERM, 1948.

HYMAN MOORE, *Petitioner,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	No. .....

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully prays that a writ of certiorari be issued to the Court of Appeals for the Fourth Circuit to review the judgment of that Court.

Statement of Matter Involved.

This is a petition for a writ of certiorari to review a decision of the Court of Appeals for the Fourth Circuit, which affirmed a decision of the Tax Court of the United States deciding that there are deficiencies in the petitioner's income taxes for the calendar years 1943 and 1944 in the amounts of $23,869.93 and $2,613.62, respectively.

The petitioner relies, as he did in the court below, solely on the facts found by the Tax Court (R. 1-8). The case involves a partnership among two husbands (Isaac Scherr and Hyman Moore) and their respective wives (Jean Scherr and Rose Moore) for the operation of a wholesale wine and beer business. The Commissioner determined that neither wife was a *bona fide* partner, and taxed the entire income of the business to the husbands. The Tax Court decided, after trial by the Court, that Jean Scherr was a *bona fide* partner, because she had contributed original capital and was rendering vital services during the taxable years. It held, however, that Rose Moore was not a *bona fide* partner, because she had made no contribution of capital and was not rendering services during the taxable year. The present petition is for review of this latter holding, which has been sustained by the Court of Appeals.

Among the facts found by the Tax Court, but expressly treated as irrelevant in the opinion, are the following: (1) a substantial portion of the petitioner's original capital was given to him by his father-in-law at Rose Moore's request; (2) prior to obtaining a partnership interest Rose Moore for four years assisted in running the office and warehouse, and stopped working only when forced to do so by the birth of a child; (3) the plan for making the wives partners was initiated by Jean Scherr; (4) Rose Moore became a partner because the petitioner insisted that his wife deserved the same consideration as did Isaac Scherr's, and because he wished to protect her in the event of his expected induction into the armed forces; (5) the decision to form the partnership was made before the parties were aware of tax advantages; and (6) the partnership interests of Jean Scherr and Rose Moore were created at the same time and by the same instrument.

The Tax Court's opinion states, "We are of the opinion that Rose Moore contributed to the business neither capi-

tal originating with her nor vital services, and *therefore* was not, in reality nor for tax purposes, a partner in the enterprise." (Italics supplied.)

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. Judgment was entered in this case by the Court of Appeals on December 2, 1948 (R. ....). No petition for rehearing was filed.

Opinions Below.

The memorandum opinion of the Tax Court, printed in full in the record (R. 1-9), is not reported. The opinion of the Court of Appeals is reported in 170 F. 2d 191, and is printed in full in the record (R. ....).

Specification of Error to Be Urged.

The Court of Appeals erred in affirming a judgment of the Tax Court which was based upon the erroneous rule of law that the validity of a partnership is determined solely by the nature of the capital or services contributed by a partner.

Reasons for Granting the Writ.

1. The rule of law announced by the Tax Court, and sustained by the Court of Appeals, is in conflict with the principles announced by this Court in *Commissioner* v. *Tower*, 327 U. S. 280, and *Lusthaus* v. *Commissioner*, 327 U. S. 293.

2. The decision of the Tax Court, affirmed by the Court of Appeals, is in direct conflict with decisions of other Courts of Appeals, including a decision of the Court of Appeals for the Fifth Circuit in which this Court has

granted certiorari. *Culbertson* v. *Commissioner*, 168 F. 2d 979.

3. The question decided by the courts below has been frequently litigated and is an important question of federal law which has not been, but should be, settled by this Court.

4. The rule of law adopted by the courts below, to the effect that an ultimate fact (*i. e.*, the validity or "reality" of a partnership) may be found on the basis of any single fact (*i. e.*, the nature of the capital or services contributed by a partner), to the exclusion of all other relevant facts, is so great a departure from the accepted course of judicial proceedings, that a review by this Court is required.

In the *Tower* case this Court said (327 U. S. 280, 290):

> "A wife may become a general or limited partner with her husband. But when she does not share in the management and control of the business, contributes no vital additional service, and where the husband purports in some way to have given her a partnership interest, *the Tax Court may properly take these circumstances into consideration in determining whether the partnership is real within the meaning of the federal revenue laws.*" (Italics supplied.)

It is obvious that this paragraph was not intended to state *any* single test for "reality"; capital and services are merely "circumstances" to be taken "into consideration" in the determination of that reality. The *Tower* opinion states (p. 286), "The formation of the partnership did not in any way alter the conduct of the business." Several elements contributed to this conclusion, including of course the facts that the business capital and business

management remained the same. The underlying fact, however, was that the transaction amounted to nothing but "drawing up papers". It was not intended to accomplish, nor did it in fact accomplish, an economic change in the business enterprise. The husband's control of the business, the wife's use of the income for things previously furnished by the husband, and, above all, the tax avoidance motive of the transaction—all pointed to this conclusion:

> "The arrangement we are here considering was of the type where proof of a motive to reduce income taxes simply lent further strength to the inference drawn by the Tax Court that the wife was not really a partner * * *. To rule otherwise would mean ordering the Tax Court to shut its eyes to the realities of tax avoidance schemes" (p. 289).

The Tax Court in the present case might have found that Rose Moore was not a "real" partner, even if it had considered all of the relevant facts. In that event, an affirmance on appeal might have been warranted, or even required. Cf. *Dobson* v. *Commissioner,* 320 U. S. 489. The Tax Court's error, however, was in deliberately closing its eyes to all facts other than the two which it has chosen to apply as the criteria in every "family partnership" case. That error is in conflict with the *Tower* principle, and requires reversal.

The Government's petition for certiorari in the *Culbertson* case states, "This case reflects an alarming tendency by some of the Courts of Appeal to circumvent the decisions of this Court in *Commissioner* v. *Tower,* 327 U. S. 280, and *Lusthaus* v. *Commissioner,* 327 U. S. 293 * * *. The case at hand represents the latest example in a series of recent cases in which the Tax Court has followed the *Tower* and *Lusthaus* principles, only to have its decision

reversed on the taxpayer's appeal." The Government cites the following cases as evidencing this "alarming tendency": *Lawton* v. *Commissioner*, 164 F. 2d 380 (C. C. A. 6th); *Weizer* v. *Commissioner*, 165 F. 2d 772 (C. C. A. 6th); *Woosley* v. *Commissioner*, 168 F. 2d 330 (C. C. A. 6th); *Canfield* v. *Commissioner*, 168 F. 2d 907 (C. C. A. 6th); *Simmons* v. *Commissioner*, 164 F. 2d 220 (C. C. A. 5th); *Singletary* v. *Commissioner*, 155 F. 2d 207 (C. C. A. 5th); *Wilson* v. *Commissioner*, 161 F. 2d 661 (C. C. A. 7th); *Durwood* v. *Commissioner*, 159 F. 2d 400 (C. C. A. 8th). In its brief, the Government adds the following subsequent decisions as evidence of the "increasing tendency in several circuits to re-examine the facts and to reverse decisions of the Tax Court * * * ": *Kent* v. *Commissioner*, 170 F. 2d 131 (C. A. 6); *Hartz* v. *Commissioner*, 170 F. 2d 313 (C. A. 8); *Walsh* v. *Commissioner*, 170 F. 2d 535 (C. A. 8); and *Graber* v. *Commissioner*, decided November 12, 1948 (C. A. 10).

We suggest that this "alarming tendency" is merely a recognition by the Courts of Appeals that the Tax Court has adopted an arbitrary rule of law in these cases which does not conform to the principles announced by this Court. Perhaps the appellate courts went too far in finding "reality" on their own examination of the facts; if so, the cases should have been remanded with directions to give proper weight to those facts. We respectfully suggest that procedure in the present case. The petitioner is content to have the Tax Court determine whether or not Rose Moore's partnership interest was "real", if only that tribunal will not feel bound to ignore most of the relevant facts which it accepted as proved at the trial.

It should be pointed out that the Tax Court's decision in this case does not represent an isolated instance of this error, or a mere inadvertence of language in the opinion. Nearly all of the cited cases, including *Culbertson*, evidence this "rule of law" which the Tax Court has imposed upon itself. We should like to call attention specifically

to another unreported decision now on appeal in the Court of Appeals for the Second Circuit. In *Margaret F. Horowitz et al.* v. *Commissioner* (Dkts. 9730, 9731, 9732, decided June 12, 1947), T. C. Memo, C. C. H. 15,843, P-H ¶47,153, the court found that the partnership interests in question grew out of an "emergent necessity"; nevertheless the opinion recites that the failure of the partners to contribute original capital or vital services compels the conclusion that the partnership interests were not "real".

It is this error of law which induced the House of Representatives to pass a retroactive corrective statute during 1948. H. R. 6712, Section 142, 80th Cong., 2d Sess. Unfortunately Congress adjourned before the Senate could act upon this legislation. We are advised, however, that such legislation will be reconsidered soon by the present Congress. The accompanying report of the Ways and Means Committee (80th Cong., 2d Sess., H. Rep. No. 2087, pp. 9-10) includes the following statement which is peculiarly applicable to the present case:

> "Legislation on family partnerships is deemed necessary because the lower courts and those administering the tax laws have taken the position that the Supreme Court's decision in the *Tower* and *Lusthaus* cases in 1946 limits the recognition of partner status in a family partnership to those who have contributed capital originating with themselves or who have performed vital additional services. At present no question is raised, however, if a husband makes a completed gift to his wife of stock in a family corporation. The gift is recognized, and the dividends paid on the stock are taxed as income to the wife. Nor would the courts or the administrative officials refuse to recognize for income tax purposes the income of a wife from rental property received as a *bona fide* gift from her husband.

> "The bill removes this discrimination with respect to the current and future years and also for open years back to 1941."

Because the decision in this case is in conflict with principles announced by this Court, by other Courts of Appeal, and by the House of Representatives, and because these principles are of great importance in the administration of the Federal tax laws, it is respectfully requested that certiorari be granted.

Respectfully submitted,

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Of Counsel:

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MARK H. JOHNSON.

January 27, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 525

HYMAN MOORE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 1-9) is not reported. The opinion of the Court of Appeals (R. 16-19) is reported at 170 F. 2d 191.

JURISDICTION

The judgment of the Court of Appeals was entered November 1, 1948. (R. 20.) The petition for a writ of certiorari was filed January 28, 1949. The jurisdiction of this Court rests upon 28 U.S.C., Section 1254.

QUESTION PRESENTED

Whether the court below erred in affirming the Tax Court's decision that business income earned by taxpayer and attributed to his wife as a "partner" was includible in taxpayer's gross income as defined in Section 22 (a) of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

These appear in the Appendix, *infra*, pp. 11-13.

STATEMENT

The facts as found by the Tax Court (R. 1-8) may be summarized as follows:[1]

In 1938 taxpayer and one Scherr became equal stockholders of a corporation which engaged in the wholesale wine business. The corporation was organized with a capital of $3,000, of which half was contributed by taxpayer and the other half by Scherr and his wife. Of the $1,500 which taxpayer invested, $1,000 was borrowed by him from a bank on the endorsement of his brother, and $500 was given to him by his father-in-law at the request of his wife. In 1939 the corporation began to distribute beer as well as wine, and needed additional capital. Scherr and his wife invested another $2,000, and the taxpayer did likewise. The additional $2,000 invested by taxpayer was borrowed

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[1] This is one of two companion cases which were consolidated for hearing before the Tax Court. (R. 1.) The Tax Court overruled the Commissioner's determination in the other case (*Isaac Scherr* v. *Commissioner*), and the Commissioner did not appeal from that decision. The Tax Court's findings are summarized insofar as they relate to this case.

from his mother. (R. 2.) In 1941 the corporation was dissolved, and the business was continued as a partnership with taxpayer and Scherr as the partners. (R. 5.)

From the inception of the business taxpayer and Scherr spent most of their time away from the office, selling and delivering wine and beer. Several other salesmen were also employed. The office and warehouse were run by Mrs. Scherr, who worked long hours daily and knew the business completely. (R. 3-4.) Taxpayer's wife had one child in 1937 and another in 1942; up until 1942 she assisted Mrs. Scherr in the office, but because of her home responsibilities she did not come to the office regularly. Shortly before her second child was born in 1942, she stopped doing any work for the business, and Mrs. Scherr then engaged a full time office assistant. (R. 4.)

In 1942 Scherr was seriously injured and his wife demanded a partnership interest in the business. Scherr discussed it with taxpayer, who requested a similar interest for his wife. They agreed to make the wives partners and communicated this decision to their accountant, who advised them that such arrangement would also afford a tax advantage. (R. 5-6.) On or about January 1, 1943, taxpayer and Scherr and their respective wives executed a partnership agreement which provided, among other things, that capital was to be contributed equally by the four of them; that profits and losses

were to be shared equally; that each was to devote full time to the business, at compensation to be mutually agreed upon; that checks were to be signed jointly by taxpayer and Scherr, or by a person authorized by them; that profits were to be divided and distributed at times "mutually determined"; and that the spouse of any retiring partner had the right to purchase his or her interest at a valuation determined by "inventory and accounting". (R. 6, 11-14.) At the time of this agreement the capital of the business was $19,618.66. Taxpayer and his wife were each credited with $4,933.25, while Scherr and his wife were each credited with $4,876.08. The husbands filed gift tax returns reporting gifts to their respective wives of the amounts of capital credited to them, and the wives filed donee returns. The firm's bank and Dun & Bradstreet were advised of the formation of the new partnership, and books were set up showing partnership interests of the wives. (R. 6-7.)

Shortly after the formation of this new partnership Mrs. Scherr raised the question of her right to sign checks and the bank was notified that her signature should be accepted as co-signer with either taxpayer or Scherr. (R. 7.)

Both capital and services were essential to the business. Mrs. Scherr contributed to the business carried on during the taxable years both capital originating with her and vital services. Taxpayer's wife contributed neither. (R. 7-8.)

In their income tax returns for 1943 and 1944 (the taxable years) taxpayer and Scherr treated the partnership income as distributable in equal shares to them and their wives. For 1943 the partnership income amounted to $127,142.65, and for 1944 it amounted to $33,527.72. (Tr. 6, 15.) The Commissioner determined that the husbands were the sole partners and that the income was therefore taxable entirely to them. (R. 1, Tr. 10-11.) Taxpayer and Scherr each petitioned for a redetermination and the cases were consolidated for hearing before the Tax Court. (R. 1.) The Tax Court held that Scherr's wife became a real partner for tax purposes, and overruled the Commissioner's determination as to him. It held otherwise as to taxpayer's wife. (R. 8-9.) Taxpayer appealed from the decision in his case; the Commissioner did not appeal from the decision in the *Scherr* case. The Court of Appeals affirmed. (R. 16-19.)

ARGUMENT

The decision below is fully in accord with *Commissioner* v. *Tower,* 327 U. S. 280, and *Lusthaus* v. *Commissioner,* 327 U. S. 293. There is no occasion for further review.

1. The question here is identical with that decided in the *Tower* and *Lusthaus* cases, *supra.* This Court there held that a valid gift by a husband to his wife of a portion of his business capital, followed by a valid partnership agreement between

them, did not necessarily render the wife his partner for federal income tax purposes. The "basic question" is who "earned" the business income; unless the wife contributes either "capital originating with her" or "vital additional services" (managerial or otherwise) or both (*Commissioner* v. *Tower*, *supra*, pp. 283, 289, 290), the Tax Court is justified in concluding that all the business income is earned by, and hence taxable to, the donor-husband. "The statutes of Congress designed to tax income actually earned because of the capital and efforts of each individual member of a joint enterprise are not to be frustrated by state laws which for state purposes prescribe the relations of the members to each other and to outsiders". *Commissioner* v. *Tower*, *supra*, p. 288. The *Tower* and *Lusthaus* decisions are but an application of the familiar *Earl-Clifford-Horst*[2] principles in the sphere of family partnerships, and were recognized as such in *Commissioner* v. *Sunnen*, 333 U. S. 591, 606.

The Tax Court found that taxpayer donated one-half of his one-half interest in a partnership to his wife contemporaneously with her admission as a partner (R. 6-8), but that his wife contributed "neither capital originating with her nor vital services" (R. 9). Applying the *Tower* and *Lusthaus* principles, it held that the share of the business income for the taxable years ascribed to and

[2] *Lucas* v. *Earl*, 281 U. S. 111; *Helvering* v. *Clifford*, 309 U. S. 331; *Helvering* v. *Horst*, 311 U. S. 112.

reported by the donee-wife as a "partner" remained taxable to taxpayer. (R. 8-9.)[3] Since taxpayer's wife admittedly (Pet. 2) contributed neither capital of her own nor vital services,[4] and hence earned none of the income in question, affirmance of the Tax Court's decision by the court below (R. 16-19) was clearly correct. This case is essentially no different from many other family partnership cases in which income ascribed to a donee-partner has been held taxable to the donor-taxpayer, and in which certiorari has been denied.[5]

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[3] In the companion *Scherr* case, the Tax Court found that Mrs. Scherr had contributed both capital of her own and vital services, and accordingly overruled the Commissioner's determination that she was not a real partner. (R. 7-8.)

[4] Although taxpayer contended before the Tax Court that his wife contributed $500 of her own (R. 9), he now concedes the correctness of the Tax Court's finding to the contrary (Pet. 2). With respect to the wife's services, both courts below found that the business from its inception had been managed and conducted by taxpayer, Scherr, and Mrs. Scherr; while taxpayer's wife performed some non-vital part-time services until 1942, in that year (which was prior to the taxable years) she ceased performing even these minor services. (R. 3-4, 18-19.)

[5] See, *e.g.*, *Fletcher* v. *Commissioner*, 164 F. 2d 182 (C.A. 2d), certiorari denied, 333 U. S. 855; *Eisenberg* v. *Commissioner*, 161 F. 2d 506 (C.A. 3d), certiorari denied, 332 U. S. 767; *Wilson* v. *Commissioner*, 161 F. 2d 556 (C.A. 4th) certiorari denied, 332 U. S. 769; *Hash* v. *Commissioner*, 152 F. 2d 722 (C.A. 4th), certiorari denied, 328 U. S. 838, rehearing denied, 328 U. S. 879; *Economos* v. *Commissioner*, 167 F. 2d 165 (C.A. 4th), certiorari denied, 335 U. S. 826; *Scherf* v. *Commissioner*, 161 F. 2d 495 (C.A. 5th), certiorari denied, 332 U. S. 810; *Belcher* v. *Commissioner*, 162 F. 2d 974 (C.A. 5th), certiorari denied, 332 U. S. 824; *Mead* v. *Commissioner*, 131 F. 2d 323 (C.A. 5th), certiorari denied, 318 U. S. 777; *Argo* v. *Commissioner*, 150 F. 2d 67 (C.A. 5th), certiorari denied, 326 U. S. 762; *Sewell's Estate* v. *Commissioner*, 151 F. 2d 806 (C.A. 5th), certiorari denied, 327 U. S. 805; *Sewell* v. *Commissioner*, 151 F. 2d 765 (C.A. 5th), certiorari denied, 327 U. S. 783; *Morton* v. *Thomas*, 158 F. 2d 574 (C.A. 5th) certiorari denied, 330

Nothing has occurred since the denial of certiorari in those cases which calls for further review of this case.[6]

2. In assuming that his wife became a partner for tax purposes because of his gift to her, and irrespective of whether she earned any of the business income, taxpayer advances (Pet. 4-8) the very argument which this Court unequivocally rejected in *Tower* and *Lusthaus*. "If" the wife invests capital of her own or vital additional services, she may be a partner in the tax sense. *Commissioner* v. *Tower*, *supra*, p. 290. To be sure, as taxpayer asserts (Pet. 4-6), there were "relevant facts" in the *Tower* case, in addition to the lack of a contribution of capital or services by the donee-wife, which supported the Tax Court's conclusion that she was not a real partner. But, as is plain from the *Tower* and *Lusthaus* opinions, these factors furnished *cumulative* support for that conclusion. Thus, the existence of a tax avoidance motive, a feature which taxpayer claims was present in *Tower* but

U. S. 834; *Hougland* v. *Commissioner*, 166 F. 2d 815 (C.A. 6th), certiorari denied, 334 U. S. 846; *Lowry* v. *Commissioner*, 154 F. 2d 448 (C.A. 6th), certiorari denied, 329 U. S. 725; *Lorenz* v. *Commissioner*, 148 F. 2d 527 (C.A. 6th), certiorari denied, 327 U. S. 786; *Doll* v. *Commissioner*, 149 F. 2d 239 (C.A. 8th), certiorari denied, 326 U. S. 725; *Nordling* v. *Commissioner*, 166 F. 2d 703 (C.A. 9th), certiorari denied, 335 U. S. 817; *Quon* v. *Commissioner*, 165 F. 2d 215 (C.A. 9th), certiorari denied, 334 U. S. 845; *Earp* v. *Jones*, 131 F. 2d 292 (C.A. 10th), certiorari denied, 318 U. S. 764.

[6] The court below properly declined (R. 17-18) to postpone its affirmance of the Tax Court's decision merely because a bill was introduced at the last session of Congress (Pet. 7) designed to accord tax recognition to partnerships predicated upon intra-family gifts of capital.

absent here (Pet. 5),[7] "simply lends further support to the inference * * * that earnings are really his and are therefore taxable to him and not to his wife." *Commissioner* v. *Tower, supra,* p. 289. Similarly, the other "relevant facts" which taxpayer claims (Pet. 4-5) were present in *Tower* and are absent here[8] are not decisive of the crucial question of who earned the income; their presence in the *Tower* case furnished "more than ample evidence to support the Tax Court's finding that no genuine union for partnership business purposes was ever intended and that the husband earned the income." *Commissioner* v. *Tower, supra,* p. 292. Though the many cases in which claimed family partnerships have been denied tax effect involve different sets of facts, as may be expected, their common denominator lies in the circumstance that the newly admitted partner contributed none of the capital and services which produced the business income.

3. The granting of the Commissioner's petition for certiorari in *Commissioner* v. *Culbertson,* No.

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[7] The Tax Court made no finding one way or the other regarding taxpayer's tax motives, but did find that his accountant advised him that the arrangement would afford a tax saving. (R. 6.) Cf. *Lusthaus* v. *Commissioner, supra.* As the court below noted (R. 18-19), taxpayer's wife was made a partner only because Mrs. Sherr—who contributed both capital of her own and vital services—was made a partner.

[8] In this connection taxpayer gratuitously assumes (Pet. 5) that he relinquished control of the interest he donated to his wife, and that his wife received and used for her own purposes the share of the income attributed to her. Neither of these assumptions is warranted by the record or the Tax Court's findings.

313, does not, as taxpayer asserts (Pet. 3-4), furnish reason for further review of this case. In the *Culbertson* case the Tax Court followed *Tower* and *Lusthaus*, but the Court of Appeals reversed. As pointed out in the Commissioner's petition for certiorari in that case, to permit the reversal to stand would seriously undermine the *Tower* and *Lusthaus* decisions and invite repeated departures from them. See also petition for certiorari in *Commissioner* v. *Hartz*, No. 520. Here both courts below have adhered to *Tower* and *Lusthaus*, and there is no more occasion for further review of this case than of the multitude of similar family partnership cases (fn. 5, *supra*) in which certiorari has been denied.

CONCLUSION

There is no occasion for further review. The decision below is in accord with the controlling decisions of this Court in the *Tower* and *Lusthaus* cases. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MARCH, 1949

APPENDIX

Internal Revenue Code:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a * * * tax * * *.

(26 U.S.C. 11.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of and business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(26 U.S.C. 22.)

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

(26 U.S.C. 181.)

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner,

he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).

(26 U.S.C. 182.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

* * * * *

(26 U.S.C. 3797.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.22 (a)-1. *What included in gross income.*—Gross income includes in general compensation for personal and professional serv-

ices, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *.

* * * * *

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